



**British Overseas Territory (BOT) Contribution to UK's 6th Periodic
Report to the UN CAT Committee**

**A Shadow Report by the Cayman Islands Human Rights
Commission**

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Introduction

In February 2017 the Foreign and Commonwealth Office commissioned contributions to the UK's 6th Periodic Report to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("UN CAT") Committee, from British Overseas Territories ("BOT"). The Report will comprise of key BOT contributions since 2012 towards UN CAT on all articles with particular focus on legislative, policy and procedural changes.

To date, the Cayman Islands Government ("the CIG") is not a signatory to the Optional Protocol to the Convention against Torture ("OPCAT"). In February 2015, the Human Rights Commission ("the Commission") wrote to the Attorney General to inquire about the CIG's plans to invite the UK Government to extend OPCAT to the Cayman Islands and, in the event that the CIG has no plans, to provide the reasons for this. The Attorney General informed the Commission, on 15 May 2015, that having had discussions on the status of the CIG intentions in this regard, the Ministry of Home Affairs ("the Ministry") had confirmed that they intended to engage in discussions with the Premier "regarding the CIG's views on undertaking the initiatives necessary to request extension of the OPCAT and subsequently ensure compliance with the Protocol."

The Commission is of the view that OPCAT is an important agreement to which the Cayman Islands should be a party. Equally, OPCAT extension is also an important step to ensure ongoing compliance with s.6 of the Cayman Islands Constitution Order 2009 ("the Constitution") –treatment of prisoners. The Commission shares Her Majesty's Inspectorate of Prisons' concerns about the state of Cayman's prisons and has emphasised these concerns to both publically and to the relevant departments of the Cayman Islands Government. As the Commission was informed by the Attorney General that the Ministry would lead the process if an extension was requested, the Commission followed up with the Ministry on several occasions. The Ministry last advised, on 22 October 2015, that the research necessary for the CIG to make a decision on the matter had not yet been progressed to the Premier in order for him to make a decision. The Ministry further indicated that the matter would be brought to his attention as soon as possible and the Commission updated thereafter. The Commission has not heard further from the Ministry since 2015.

In addition, the Commission is of the opinion that the failure to appoint anyone to, the Police Public Complaints Authority for over 6 years is a cause for regret. If enacted, the Ombudsman Bill, 2016, will remedy this concerning lacuna and provide a proper forum for those who wish to make complaints about police action.

Notwithstanding the Commission's criticisms of Government policy and legislation, it must also be recognised that positive progress has been made in many relevant areas since 2012. The Commission hopes that appropriate financial resources and technical expertise are devoted to continuing this encouraging trend and to further bolstering protection from torture and cruel, inhuman or degrading treatment or punishment in the Cayman Islands.

Article	Summary of progress since 2012
Article 2: Effective measures to prevent acts of torture	<ul style="list-style-type: none"> • Implementation of Part I – the Bill of Rights, Freedoms and Responsibilities (“BoR”) of the Constitution occurred in November 2012 and November 2013. • Torture and inhuman treatment is now expressly prohibited under section 3 of the Constitution. • The Commission was established under s.116 of the Constitution. Inter alia it is empowered to:- <ul style="list-style-type: none"> a. promote understanding and observance of human rights; b. accept complaints of alleged breaches of infringements of the BoR or other international human rights treaties extended to the Cayman Islands; c. provide a forum for mediation or conciliation; and d. publish reports on its own initiative on human rights issues.
Article 3: Refoulment	<ul style="list-style-type: none"> • The Commission has engaged extensively, formally and informally, with the CIG regarding the policies and procedures for the determination of asylum claims by (mainly Cuban) migrants arriving in Cayman. Whilst not meeting the concerns of the Commission CIG’s processes for handling these cases continue to improve.
Article 9: Mutual legal assistance	<ul style="list-style-type: none"> • Extensive research and comment on the CIG handling and policies or lack thereof, of migrants (Cubans in particular) by the Commission. For detailed information on the Commission’s concerns visit: http://www.humanrightscommission.ky/upimages/publicationdoc/12320702_1468612294_1468612294.PDF
Article 10: Education and training of police, military, doctors and other personnel to prevent torture	<p>The Commission has assisted with training and education of public officials in various ways, including by the:-</p> <ul style="list-style-type: none"> • publication of pamphlets detailing and explaining each of the rights in the BoR; • publication of a workbook on human rights for police officers; • review of the BoR sensitisation programme for all public officials; • publication of a booklet for teachers; • creation of a booklet for prison officers; and • creation of a booklet for mental health practitioners.
Article 11: Review of rules, instructions, methods and practices and arrangements for those in custody to prevent torture	<ul style="list-style-type: none"> • Inspection of Cayman’s prison and detention facilities was undertaken by HM Prisons Inspectorate (“HMIP”) in 2012. Their subsequent report found that significant concerns persisted regarding the conditions in Cayman’s Prisons. Since 2011 the Commission has corresponded with various CIG representatives such as the former Governor, Duncan Taylor, CBE, the Attorney General and the Director of Prisons regarding its concerns about the prisons in general and the contents of the HMIP’s reports. That correspondence can be found under <i>Prisons – General Concerns</i> at: http://www.humanrightscommission.ky/practices. New police custody suites were opened on 30 March 2016 to replace those which had been the subject of extensive criticism by HMIP.

	<ul style="list-style-type: none"> • The Conditional Release Law, 2014 was passed, which includes the requirement to set a tariff for all persons sentenced to life imprisonment, removes the requirement for mandatory indeterminate life sentences. • Extensive research and comment has been made by the Commission on the CIG’s handling and policies (or lack thereof) for migrants (Cuban nationals in particular). Detailed information on the Commission’s concerns can be found at: http://www.humanrightscommission.ky/upimages/publicationdoc/12320702_1468612294_1468612294.PDF. • The Commission continues to be concerned at the failure to extend the OPCAT to the Cayman Islands as detailed in the introduction.
Articles 12 & 13: Investigation of acts of torture and other forms of ill-treatment & Availability of complaints procedures for those suffering torture or other forms of ill-treatment	<ul style="list-style-type: none"> • Complaints may now be brought to the Commission under section 116 of the Constitution. • The Ombudsman Bill (2016), <i>if</i> passed into law, will make provision for the investigation of complaints against police officers, following the failure by the Governor, for 6 years, to appoint anyone to the Police Public Complaints Authority (established under the Police Law (2010 Revision)).
Article 14: Redress for victims of torture	<ul style="list-style-type: none"> • Complaints may now be brought to the Grand Court under section 26 of the Constitution alleging breaches of the BoR. The Grand Court has the power to order damages and other remedies under section 27 of the Constitution.